IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil First Appeal No. 77/88
Lrs of Nanalal Vs. Lrs of Arjunlal

Date of order : 13.03.2007

PRESENT
HON'BLE MR. BHAGWATI PRASAD, J.

Mr. Rameshwar Chouhan for the appellant.
Mr. Sanjay Mathur for the respondent.

Heard.

The present first appeal is filed against the decision of the Addl. District Judge, Rajsamand in Civil Original Suit No. 23/83 dated 11.5.1988. The appellant was sued of malicious prosecution. The plaintiffs filed a suit for damages against the appellant claiming that criminal prosecution was launched in the court of Munsif Magistrate, Nathdwara under Sec. 420 I.P.C. The prosecution which was launched has ultimately been withdrawn. This is not a bonafide prosecution. The dispute in between the parties was per se a civil dispute. Since the civil suit was given a colour of criminal dispute, it was not with bonafide intention and, therefore, instead of pursuing the criminal prosecution a civil suit was filed. The trial court framed the following issues:

"1- क्या प्रतिवादीगण ने वादीगण के विरूद्ध मुन्सिफ एवं न्यायिक मजिस्ट्रेट, नाथद्वारा में धारा 420 भा.दं.सं. के अन्तर्गत इस्तगासा पेश किया था वह द्वेषपूर्ण था मेलिस के आधार पर था ?

2- क्या इस इस्तगासे से जिसमें कि अपीलार्थीगण डिस्चार्ज किये गये हो वादीगण की प्रतिष्ठा को धक्का लगा। इस आधार पर प्रत्येक वादी 6-6 हजार रूपये का हर्जाना पाने के अधिकारी है ?

3- प्रतिकार क्या होगा ?

अतिरिक्त तनकी जो तारीख 7-5-88 को बनायी गयी।

4- क्या वादी प्रतिवादी से रूपये 3 हजार स्पेशल डेमेजेज के रूप में वाद पत्र की धारा 6 के अनुसार प्राप्त करने का अधिकारी है?"

The trial court after considering the case of the plaintiff has held that the plaintiffs have stated that their reputation and feelings have been hurt and, therefore, they should be awarded Rs. 6000/-. The trial court was of the opinion that since the facts of the institution of criminal prosecution was known to the others, this resulted into the loss of reputation and thus, the plaintiffs are entitled to have an award for Rs. 6000/- as damages. The suit was filed by two plaintiffs one by Arjunlal and another by Mangilal. The aforesaid award was made in favour of Arjunlal, no award was made for Mangilal because Mangilal had not appeared in the witness box and did not prove any damages.

Learned counsel for the appellant urged that the kind of treatment given to the evidence and behavior of the parties are not in accordance with the settled cannons of the law. In one paragraph the learned district Judge allowed the case for claim. No evidence has been discussed and no witnesses have been cited and yet the decree has been passed against the appellant for Rs. 6000/- .

Learned counsel for the respondents was at loss to show any cogent evidence from record to establish that loss of reputation has been established on record, it was plain and simple case of the dispute in between the parties where loss of reputation by any deeds of the appellant has not been shown from any reliable evidence by the plaintiffs.

Having considered the material on record, this court is of the opinion that the trial court has cursorily awarded the damages without considering the evidence in this regard. The treatment given is only cursory. That being the position, the decree is not liable to be sustained and it is accordingly set aside. No case for award of damages is made out and the suit is deserves to be dismissed and the same is hereby dismissed. The appeal is allowed and the decree is set aside.

(BHAGWATI PRASAD), J

ns.